

c. fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and

d. promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Party engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2 of this Article.

#### Article 10

##### User Charges

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Party shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Party on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Party may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities

and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. Neither Party shall be held, in dispute resolution procedures pursuant to Article 15, to be in breach of a provision of this Article, unless (a) it fails to undertake a review of the charge or practice that is the subject of complaint by the other Party within a reasonable amount of time; or (b) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

#### Article 11

##### Fair Competition

1. Each Party shall allow a fair and equal opportunity for the designated airlines of both Parties to compete in providing the international air transportation governed by this Agreement.

2. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, neither Party shall unilaterally limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Party, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

3. Neither Party shall impose on the other Party's designated airlines a first-refusal requirement, uplift ratio,

no-objection fee, or any other requirement with respect to capacity, frequency or traffic that would be inconsistent with the purposes of this Agreement.

4. Neither Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Party for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article or as may be specifically authorized in an Annex to this Agreement. If a Party requires filings for information purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Party.

#### Article 12

##### Pricing

1. Each Party shall allow prices for air transportation to be established by each designated airline based upon commercial considerations in the marketplace. Intervention by the Parties shall be limited to:

- a. prevention of unreasonably discriminatory prices or practices;
- b. protection of consumers from prices that are unreasonably high or restrictive due to the abuse of a dominant position; and
- c. protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support.

2. Prices for international air transportation between the territories of the Parties shall not be required to be filed. Notwithstanding the foregoing, the designated airlines of the Parties shall continue to provide immediate access, on request, to information on historical, existing, and proposed prices to the aeronautical authorities of the Parties in a manner and format acceptable to those aeronautical authorities.

3. Neither Party shall take unilateral action to prevent the inauguration or continuation of a price proposed to be charged

or charged by (i) a designated airline of either Party for international air transportation between the territories of the Parties, or (ii) a designated airline of one Party for international air transportation between the territory of the other Party and any other country, including in both cases transportation on an interline or intraline basis. If either Party believes that any such price is inconsistent with the considerations set forth in paragraph 1 of this Article, it shall request consultations and notify the other Party of the reasons for its dissatisfaction as soon as possible. These consultations shall be held not later than 30 days after receipt of the request, and the Parties shall cooperate in securing information necessary for reasoned resolution of the issue. If the Parties reach agreement with respect to a price for which a notice of dissatisfaction has been given, each Party shall use its best efforts to put that agreement into effect. Without such mutual agreement, the price shall go into effect or continue in effect.

#### Article 13

##### **Amendment**

1. This Agreement may be amended by written agreement of the Parties.
2. If, after entry into force of this Agreement, both Parties become party to a multilateral agreement that addresses matters covered by this Agreement, either Party may request consultations to determine whether this Agreement should be revised to take into account the multilateral agreement.

#### Article 14

##### **Consultations**

Either Party may, at any time, request consultations relating to this Agreement. Such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party receives the request unless otherwise agreed.

Article 15**Settlement of Disputes**

1. Any dispute arising under this Agreement, except those that may arise under paragraph 3 of Article 12 (Pricing), that is not resolved by a first round of formal consultations may be referred by agreement of the Parties for decision to some person or body. If the Parties do not so agree, the dispute shall, at the request of either Party, be submitted to arbitration in accordance with the procedures set forth below.
2. Arbitration shall be by a tribunal of three arbitrators to be constituted as follows:
  - a. Within 30 days after the receipt of a request for arbitration, each Party shall name one arbitrator. Within 60 days after these two arbitrators have been named, they shall by agreement appoint a third arbitrator, who shall act as President of the arbitral tribunal;
  - b. If either Party fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph a of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same nationality as one of the Parties, the most senior Vice President who is not disqualified on that ground shall make the appointment. In the event that either the President or the most senior qualified Vice President appoints the third arbitrator under this Paragraph, that third arbitrator shall not be a national of either of the Parties.
3. Except as otherwise agreed, the arbitral tribunal shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The tribunal, once formed, may recommend interim relief measures pending its final determination. At the direction of the tribunal or at the request of either of the Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than 15 days after the tribunal is fully constituted.
4. Except as otherwise agreed or as directed by the tribunal, each Party shall submit a memorandum within 45 days of the time the tribunal is fully constituted. Replies shall

be due 60 days later. The tribunal shall hold a hearing at the request of either Party or on its own initiative within 15 days after replies are due.

5. The tribunal shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision of the majority of the tribunal shall prevail.

6. The Parties may submit requests for clarification of the decision within 15 days after it is rendered and any clarification given shall be issued within 15 days of such request.

7. Each Party shall, to the degree consistent with its national law, give full effect to any decision or award of the arbitral tribunal.

8. The expenses of the arbitral tribunal, including the fees and expenses of the arbitrators, shall be shared equally by the Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2b of this Article shall be considered to be part of the expenses of the arbitral tribunal.

#### Article 16

##### Termination

Either Party may, at any time, give notice in writing to the other Party of its decision to terminate this Agreement. Such notice shall be sent simultaneously to the International Civil Aviation Organization. This Agreement shall terminate at midnight (at the place of receipt of the notice to the other Party) immediately before the first anniversary of the date of receipt of the notice by the other Party, unless the notice is withdrawn by agreement of the Parties before the end of this period.

Article 17

## Registration with ICAO

This Agreement and all amendments thereto shall be registered with the International Civil Aviation Organization.

Article 18

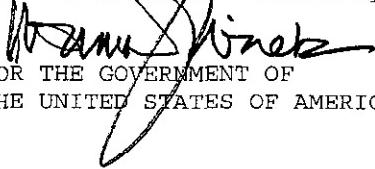
## Entry into Force

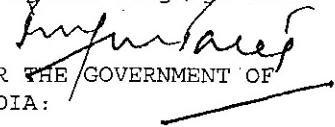
This Agreement and its Annexes shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of this Agreement and its Annexes.

Upon entry into force, this Agreement shall supersede the Air Transport Agreement between the Government of the United States of America and the Government of India signed at New Delhi, February 3, 1956, as amended by the Agreement effected by exchange of notes at New Delhi October 26, 1964, and the Agreement effected by exchange of notes at New Delhi May 4, 1989.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at New Delhi, this 14<sup>th</sup> day of April, 2005, in duplicate, in the English language, which shall be an authentic text. A translation of the Agreement into the Hindi language shall be prepared which shall be considered equally authentic when agreed upon by an exchange of diplomatic notes that confirm its conformity with the English language text.

  
FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA:

  
FOR THE GOVERNMENT OF  
INDIA:

ANNEX I

## Scheduled Air Transportation

Section 1

## Routes

Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, be entitled to perform scheduled international air transportation between points on the following routes:

A. Routes for the airline or airlines designated by the Government of the United States:

1. From points behind the United States via the United States and intermediate points to a point or points in India and beyond.
2. For all-cargo service or services, between India and any point or points.

B. Routes for the airline or airlines designated by the Government of India:

1. From points behind India via India and intermediate points to a point or points in the United States and beyond.
2. For all-cargo service or services, between the United States and any point or points.

Section 2

## Operational Flexibility

Each designated airline may, on any or all flights and at its option:

1. operate flights in either or both directions;
2. combine different flight numbers within one aircraft operation;
3. serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;

4. omit stops at any point or points;
5. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes; and
6. serve points behind any point in its territory with or without change of aircraft or flight number and may hold out and advertise such services to the public as through services;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement; provided that, with the exception of all-cargo services, the service serves a point in the territory of the Party designating the airline.

### Section 3

#### Change of Gauge

On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.

ANNEX II

## Charter Air Transportation

Section 1

A. Airlines of each Party designated under this Annex shall, in accordance with the terms of their designation, have the right to carry international charter traffic of passengers (and their accompanying baggage) and/or cargo (including, but not limited to, freight forwarder, split, and combination (passenger/cargo) charters):

1. Between any point or points in the territory of the Party that has designated the airline and any point or points in the territory of the other Party; and
2. Between any point or points in the territory of the other Party and any point or points in a third country or countries, provided that, except with respect to cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes service to the homeland for the purpose of carrying local traffic between the homeland and the territory of the other Party.

B. In the performance of services covered by this Annex, airlines of each Party designated under this Annex shall also have the right: (1) to make stopovers at any points whether within or outside of the territory of either Party; (2) to carry transit traffic through the other Party's territory; (3) to combine on the same aircraft traffic originating in one Party's territory, traffic originating in the other Party's territory, and traffic originating in third countries; and (4) to perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, except with respect to cargo charters, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.

C. Each Party shall extend favorable consideration to applications by airlines of the other Party to carry traffic

not covered by this Annex on the basis of comity and reciprocity.

#### Section 2

A. Any airline designated by either Party performing international charter air transportation originating in the territory of either Party, whether on a one-way or round-trip basis, shall have the option of complying with the charter laws, regulations, and rules either of its homeland or of the other Party. If a Party applies different rules, regulations, terms, conditions, or limitations to one or more of its airlines, or to airlines of different countries, each designated airline shall be subject to the least restrictive of such criteria.

B. However, nothing contained in the above paragraph shall limit the rights of either Party to require airlines designated under this Annex by either Party to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights.

#### Section 3

Except with respect to the consumer protection rules referred to in the preceding paragraph, neither Party shall require an airline designated under this Annex by the other Party, in respect of the carriage of traffic from the territory of that other Party or of a third country on a one-way or round-trip basis, to submit more than a declaration of conformity with the applicable laws, regulations and rules referred to under section 2 of this Annex or of a waiver of these laws, regulations, or rules granted by the applicable aeronautical authorities.

ANNEX III

## Transitional Provisions

Section 1

## Ground-handling

A. Notwithstanding paragraph 3 of Article 8, designated airlines shall not have the right to perform their own ground-handling in the territory of the other Party ("self-handling") until January 15, 2007. This does not preclude designated airlines that currently self-handle, in whole or in part, from continuing to do so.

B. This Section shall expire on January 15, 2007, or when India confirms that self-handling may occur in accordance with paragraph 3 of Article 8, whichever is earliest.

Section 2

## Passenger Charter Service

A. Notwithstanding paragraph A of Section 2 of Annex II, either Party may, until January 15, 2010, require an airline of the other Party whose designation allows the exercise of passenger charter air service rights to exercise those rights in accordance with the rules and regulations of that first Party for the carriage of international charter traffic.

B. This Section shall expire on January 15, 2010.